



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0848]

RIN 1625-AA00

### Safety Zone; Shore (Belt) Parkway Bridge Construction, Mill Basin; Brooklyn, NY

**AGENCY:** Coast Guard, Department of Homeland Security, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is removing the safety zone that was established by the Captain of the Port Sector New York on November 24, 2015, that can be found under Docket Number USCG-2014-1044, titled “Safety Zone; Shore (Belt) Parkway Bridge Construction, Mill Basin; Brooklyn, NY.” The safety zone was established to protect persons and vessels from potential hazards associated with bridge demolition and construction operations. The Coast Guard received confirmation that the bridge construction project is complete, and that the safety zone is no longer enforced. This action removes the existing regulations related to the safety zone.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0848 in the search box and click "Search." Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 S. Stevenson, Waterways Management Division, U.S. Coast Guard; telephone 719-354-4000, email D01-SMB-SecNY-Waterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the New York
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On November 24, 2015, the Coast Guard established the safety zone under Docket Number USCG-2014-1044, titled “Safety Zone; Shore (Belt) Parkway Bridge Construction, Mill Basin; Brooklyn, NY.” The safety zone was established to protect people and vessels from the potential hazards associated with a bridge demolition and construction project. The initial final rule stated that the Coast Guard will disestablish the safety zone once the bridge project is complete. The Coast Guard received confirmation on September 13, 2019, that the bridge project was completed and enforcement of the safety zone was no longer necessary.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The safety zone has not been enforced since the project was completed on September 13, 2019. Sufficient time has

passed since the completion of the bridge project and the last enforcement of this safety zone for the Coast Guard to receive any adverse public implications. In addition, during the initial NPRM process for the establishment of the safety zone no adverse comments were received that pertained to the Coast Guard disestablishing the safety zone once the project was complete. Therefore the Coast Guard has determined that it is unnecessary and contrary to the public interest to publish an NPRM because this action is merely removing a regulatory restriction that is no longer needed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The safety zone is no longer needed and has not been enforced since 2019. This rule requires an administrative change to the **Federal Register**, in order to relieve a regulatory restriction that is no longer applicable or necessary. Therefore, a delayed effective date is unnecessary and contrary to the public interest.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New York (COTP) has determined that the potential hazards associated with the Shore (Belt) Parkway Bridge Construction are no longer present. On November 13, 2019, the Coast Guard received confirmation that the bridge project was complete and the safety zone was no longer enforced.

### **IV. Discussion of the Rule**

On December 8, 2015, the Coast Guard published a final rule “Safety Zone; Shore (Belt) Parkway Bridge Construction, Mill Basin; Brooklyn, NY” in the Federal Register (80 FR 76206). The safety zone was necessary to protect people and vessels from potential hazards with the bridge demolition and construction. The initial final rule that established this safety zone stated that the Coast Guard would publish a direct final rule

once the bridge project is complete. The Coast Guard has confirmed that the bridge project is complete and the safety zone is no longer needed.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the actions taken to disestablish a safety zone are not considered a significant regulatory action.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above this final rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities

between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves removing a safety zone that was established for bridge construction operations that have since been completed. It is categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the ADDRESSES section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

**§ 165.161 [REMOVED]**

2. Remove § 165.161.

**Dated:** February 15, 2022.

**Z. Merchant,**

*Captain, U.S. Coast Guard,*

*Captain of the Port New York.*

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